

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
May 1, 2012

In the Matter of J. W. VARNER-KELLER, Minor.

No. 305267
Washtenaw Circuit Court
Family Division
LC No. 2010-000090-NA

Before: BORRELLO, P.J., and JANSEN and GLEICHER, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's opinion and order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (g), (i), (j), and (l). For the reasons set forth in this opinion, we affirm.

The minor child, J. W., was born after his two older siblings, K. and I., had become temporary court wards eight months earlier, and he was immediately removed from respondent's care. Respondent's involvement with Children's Protective Services dated back to 2006 when, shortly after the birth of K., an unsubstantiated referral was made alleging that respondent had not bonded with K. Shortly thereafter a referral was made alleging that K. suffered from failure to thrive. Services were provided to respondent, including in-home assistance, and the case was eventually closed. Additional referrals alleging physical abuse and neglect were received in July 2006 and February 2007 regarding K., and then of both K. and I. in October 2007 and April 2008. On December 15, 2009, petitioner received a referral that respondent had been arrested by the Belleville Police Department for child abuse for hitting K. and leaving a swollen bruise above her right eye while at the Belleville High School auditorium. K. and I. were removed, respondent later pleaded no contest to child abuse charges, and a petition seeking termination of her parental rights to the two children was pending at the time the present petition involving J. W. was filed. Numerous witnesses testified at the adjudication trial, including witnesses to the alleged abuse of K. at the high school, family members, foster care providers, caseworkers, and therapists. On March 7, 2011, the trial court granted the supplemental petition seeking termination of respondent's parental rights to K. and I. On April 12, 2011, a supplemental petition was filed seeking the termination of respondent's parental rights to J. W. pursuant to MCL 712A.19b(3)(b)(i), (g), (i), (j), and (l). Relying on the testimony and evidence presented during the adjudication trial and additional evidence offered at the termination hearing, the trial court found clear and convincing evidence to support termination of respondent's parental rights to J. W. based on the aforementioned statutory grounds. Respondent appeals as of right the

termination of her parental rights to J. W., challenging the evidentiary support for the trial court's findings.

Termination of parental rights requires a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). The trial court must then order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews for clear error the trial court's factual findings as well as its ultimate decision that a statutory ground for termination of parental rights had been proved by clear and convincing evidence. MCR 3.977(K); *In re Mason*, 486 Mich at 152. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the basis of all evidence is left with the definite and firm conviction that a mistake has been made, giving due regard to the trial court's opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Termination of respondent's parental rights to J. W. was predicated largely on her parenting of J. W.'s siblings and the services rendered over the previous five years. With respect to § 19b(3)(b)(i) the trial court found that respondent's actions caused physical injury or physical abuse of K. and that there was a reasonable likelihood that J. W. would suffer from injury or abuse in the foreseeable future if placed in respondent's home. The trial court determined that credible testimony was presented that respondent had repeatedly struck K. about the arms and back while in a school auditorium, and that upon being struck in the back of the head, K. fell forward and hit her head on the seat in front of her causing a lump to swell above her eye. The trial court did not find respondent's explanation, or that of her companion, to be credible. Giving due regard to the trial court's opportunity to observe and assess the credibility of the witnesses, deference must be accorded to this determination. *In re Miller*, 433 Mich at 337. Additionally there was evidence from respondent that she had struck K. in the past, even if she later characterized her "whippen" as a mere tap on the bottom. The trial court also found that J. W. would suffer injury or abuse in the foreseeable future if placed in respondent's home, consistent with the testimony of numerous witnesses regarding respondent's long history of anger issues. Respondent's anger issues often transformed into taking aggressive action against the minors. However, respondent was unable or unwilling to acknowledge that she had anger issues, or the severity of the "whippen" that she meted out when angry.

In addition to these findings, the record reveals that none of the providers or therapists believed that respondent had benefited from any therapy or services such that she now possessed the capacity to control her anger and her children would not be at risk of harm. To the contrary, Dr. Ehrlich explained that respondent's intellectual deficiencies and the way in which she perceived the world around her would constantly be a source of frustration and bewilderment to which she responds with anger. Despite years of services respondent continued to express hostility toward the caseworker and foster parents in voice messages and personal contacts, continued to use inappropriate language and behaviors around adults and children, and continued to belittle J. W. during visitation. The trial court's finding that MCL 712A.19b(3)(b)(i) was established by clear and convincing evidence was not clearly erroneous.

The evidence in support of termination under § 19b(3)(b)(i) similarly supported the trial court's finding that § 19b(3)(i), (j), and (l) had been established by clear and convincing

evidence. Respondent's parental rights to K. and I. were terminated due to serious and chronic neglect or physical abuse, prior attempts to rehabilitate her were unsuccessful, and there was a reasonable likelihood, based on her conduct or capacity that J. W. would be harmed returned to her care.

Turning to § 19b(3)(g), the evidence needed to establish clearly and convincingly that, without regard to intent, respondent failed to provide proper care or custody for J. W. and that there was no reasonable expectation that she would be able to do so within a reasonable time considering the child's age. At the time of the termination hearing respondent did not have independent housing sufficient for her and J. W. and had failed to provide proof of a stable source of income. During the time the children were in her care, respondent provided extremely limited supplies of food and diapers. She did not assist in toilet training I. and would often leave the care giving of the children to others around her. On appeal respondent argues that petitioner failed to provide her services that she would need to reunify with J. W., yet later claims that the evidence strongly suggested that she had the ability to comply with her agreement and that she did make progress toward becoming a better parent. Regardless of the dichotomy of her argument on appeal, the record refutes both claims. Over five years respondent received numerous services, including intensive parenting classes, anger management classes, in-home assistance, individual counseling, money management classes, and the RENEW program. Although some progress was observed, respondent's progress was never significant enough to recommend reunification. Further, whenever respondent demonstrated progress, she would revert back to the same behavior which formed the basis for jurisdiction. We find no clear error in the trial court's determination that respondent failed to provide proper care or custody of J. W. and that there was no reasonable likelihood that she would be able to do so within a reasonable time considering the age of the child.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Elizabeth L. Gleicher